

Exhibit 3

In The Matter Of:

*Darcy Corbitt, Destiny Clark, and Jane Doe v.
Hal Taylor, etc., et al.*

*Deena Pregno
November 14, 2018*

*Baker Realtime Worldwide Court Reporting & Video
250 Commerce Street
Third Floor, Suite One
Montgomery, Alabama 36104
www.BakerRealtime.com*

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO.: 2:18-CV-00091-MHT-GMB

DARCY CORBITT, DESTINY CLARK, and JANE DOE,
Plaintiffs,

V.

HAL TAYLOR, in his official capacity as
Secretary of the Alabama Law Enforcement
Agency, et al.

Defendants.

DEPOSITION OF DEENA PREGNO

November 14, 2018

Taken before Elaine Scott, CCR,
Commissioner for the State of Alabama at
Large, in the Law Offices of the Alabama
Attorney General, 501 Washington Avenue,
Montgomery, Alabama, on Thursday, November 14,
2018, commencing at approximately 9:00 a.m.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

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FOR THE DEFENDANTS:

OFFICE OF THE ATTORNEY GENERAL, STATE OF

ALABAMA

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Montgomery, Alabama 36130

1 A P P E A R A N C E S (continued)

2

3 ALSO PRESENT:

4 Meredith Barnes

5

6 COURT REPORTER:

7 BAKER REALTIME WORLDWIDE REPORTING & VIDEO

8 Elaine Scott

9 250 Commerce Street

10 Third Floor, Suite One

11 Montgomery, Alabama 36104

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1 approximate date of when you think this policy
2 was most recently reviewed?

3 A. Late 2015 or early 2016.

4 Q. Okay. Are there any other written
5 or unwritten policies currently in effect
6 regarding sex designations on Alabama driver's
7 licenses?

8 A. No.

9 Q. And was this policy, the most
10 recent policy, issued under your authority?

11 A. Yes.

12 Q. Did you personally approve this
13 policy before it went into effect?

14 A. Yes.

15 Q. I'm now going to show you what's
16 marked as Plaintiff's Exhibit 4. Can you tell
17 us what this policy is?

18 A. It's policy order 63, revised date
19 July 1, 2015.

20 Q. So is this the policy that was in
21 effect most recently before the one that you
22 just reviewed that was D2?

23 A. Yes.

1 A. I don't know.

2 Q. Did the policy from 2004 at some
3 point change into the unwritten procedure that
4 you described to me?

5 A. Yes.

6 Q. When did that change happen?

7 A. I don't know.

8 Q. How did that change happen?

9 A. I don't know.

10 Q. Why did that change happen?

11 A. Which change?

12 Q. The change from the policy in 2004
13 to the unwritten procedure?

14 A. I guess to allow more latitude for
15 people requesting.

16 Q. In what way does the unwritten
17 procedure -- sorry. I should say in what way
18 did the unwritten procedure provide more
19 latitude than the policy from 2004?

20 A. Well, I'm not sure what the policy
21 was in 2004. I'm going off of the 2012
22 policy.

23 Q. Was the policy in -- I'm sorry.

1 Q. Was anyone involved other than the
2 legal unit?

3 A. I would have to say someone from
4 the medical unit.

5 Q. And would anyone aside from the
6 legal unit and someone from the medical unit
7 have been involved?

8 A. Probably the driver's license
9 division chief and at the time director of
10 public safety.

11 Q. Under whose authority was it
12 issued?

13 A. The director of public safety and
14 the driver's license division.

15 Q. Do you know who the director of
16 public safety was at that time?

17 A. No.

18 Q. Who was consulted in the process of
19 developing this policy?

20 A. I can't be completely sure because
21 I was not there, but I would say medical unit
22 personnel and legal.

23 Q. And were there particular

1 individuals or positions within the medical
2 unit who would have been consulted?

3 A. Just those people that handled the
4 request.

5 Q. Okay. So the people in the medical
6 unit who responded to individual requests --

7 A. Correct.

8 Q. -- to change sex designation --

9 A. Correct.

10 Q. -- would have been consulted in the
11 process?

12 A. Correct.

13 Q. Do you know if the medical advisory
14 board was involved?

15 A. I do not know.

16 Q. Do you have any reason to think
17 that the medical advisory board was involved?

18 A. I do not.

19 Q. Who would have had the final say in
20 what the policy was?

21 A. I would think the director and the
22 legal unit would be collaborative.

23 Q. Okay. So ultimately the director

1 of public -- of the Department of Public
2 Safety and the legal department would have to
3 come to an agreement?

4 A. Correct.

5 Q. Okay. What problems did the policy
6 seek to address?

7 A. A formal procedure for handling
8 those requests.

9 Q. Okay. So one goal of creating the
10 policy was to have a formal procedure; is that
11 correct?

12 A. And consistency.

13 Q. Okay. So another goal was to
14 create more consistency in how ALEA responded
15 to these requests; is that right?

16 A. Right.

17 Q. Were there any other goals in
18 creating this policy?

19 A. Not to my knowledge.

20 Q. Were there meetings about
21 developing the policy?

22 A. I don't know.

23 Q. Are you aware of any notes or

1 records taken from meetings about the
2 development of the policy?

3 A. No.

4 Q. Were any constraints taken into
5 account in creating the policy?

6 A. Can you be more specific? What do
7 you mean by constraints?

8 Q. When ALEA was developing its
9 policy, did they consider any limitations on
10 resources or programmatic needs that would
11 limit what they could do with the policy?

12 A. I'm not sure. It was -- the policy
13 was established based on the state statute for
14 changing the gender on a birth certificate.
15 That's what it was modeled after.

16 Q. Okay. Before settling on modeling
17 the state statute for birth certificates, did
18 ALEA consider any other options for the
19 policy?

20 A. Not that I'm aware of.

21 Q. Why not?

22 A. I don't know.

23 Q. Why did ALEA choose to model the

1 policy after the state birth certificate
2 statute?

3 A. We wanted to be consistent in how
4 we operated as a state.

5 Q. And why was consistency with how
6 the state operated for birth certificates
7 important?

8 A. Because if we were going to require
9 an amended birth certificate, we wanted to
10 make sure we were handling it in the right
11 manner.

12 Q. What does the right manner mean?

13 A. We want an amended birth
14 certificate which follows Alabama statutes, so
15 we wanted to be in line with what their
16 requirements were.

17 Q. Was the understanding of ALEA at
18 the time that it was bound to follow the
19 statute regarding birth certificates?

20 A. No.

21 Q. Was it the understanding of ALEA at
22 the time that it would be desirable to follow
23 the statute as far as birth certificates?

1 A. Well, basically -- let me clarify.
2 ALEA is a law enforcement agency. Although we
3 submit -- we produce a driver's license, it's
4 also an official identity document. And as
5 law enforcement we want to ensure the
6 information that is on the card is correct,
7 and so we want to make sure the information
8 we're providing to law enforcement officers,
9 correctional agencies, emergency responders,
10 when you question someone -- when a male
11 officer questions a female subject normally
12 they have more than themselves in a room so
13 they can't allege that there's no impropriety
14 going on. So that's why we wanted to make
15 sure we were in line on the handling of the
16 subject as a law enforcement professional. If
17 you detain someone or arrest them as far as
18 booking procedures and things like that, it's
19 upon us to let them know the right procedures.

20 Q. So at the time that this policy was
21 created in 2012, did ALEA consider the impact
22 of this policy on arrest and booking
23 procedures?

1 A. I don't -- I'm not sure if they did
2 or not.

3 Q. So just sticking again just to the
4 time before the creation of this policy, in
5 the course of creating this policy, what
6 considerations went into ALEA's decision to
7 adopt this policy as opposed to some other?

8 A. What the state requires for amended
9 birth certificates.

10 Q. Okay. Were there any other
11 considerations that ALEA took into account at
12 that time?

13 A. Not that I'm aware of.

14 Q. Are you aware of any debate that
15 concerned -- that concerned the development of
16 the policy prior to 2012?

17 A. No.

18 Q. Were there any conflicting views
19 that had to be resolved at that time?

20 A. Not to my knowledge.

21 Q. When the policy was most recently
22 revised in 2016, what was that process?

23 A. We had it vetted through legal.

1 And we changed it to an and/or instead of
2 requiring both documents.

3 Q. Just to clarify, so in 2012 did it
4 require -- did the policy require both
5 documents?

6 A. Amended birth certificate along
7 with documentation on letterhead from the
8 physician.

9 Q. And so then in the 2016 version it
10 says and/or to indicate that either one of
11 those documents is sufficient?

12 A. Correct.

13 Q. Okay. Who was involved in making
14 that decision?

15 A. It would be me, the legal unit, and
16 the medical unit personnel.

17 Q. Who in the medical unit was
18 involved?

19 A. Jeannie Eastman.

20 Q. Who were the people from the legal
21 unit?

22 A. I'm not -- I would -- I think
23 Jessica Sanders was involved.

1 Q. And you think there may have been
2 other people who were involved from legal?

3 A. I don't know who else.

4 Q. Okay. And what was your goal in
5 revising policy order 63?

6 A. Giving them more latitude.

7 Q. And why was it important to give
8 more latitude?

9 A. To be more -- you know, give them
10 the ability to get what they want.

11 Q. And were there any reasons why you
12 wanted to make it easier for people to get
13 what they wanted?

14 A. To be reasonable. And as long as
15 they're following procedure.

16 Q. And was anyone aside from you,
17 Jeannie Eastman, and maybe Jessica Sanders or
18 someone else from the legal unit involved in
19 the most recent revision?

20 A. No.

21 Q. Were there any other goals that you
22 had in mind in creating this policy?

23 A. No.

1 Q. Did you consider other options
2 aside from the current policy before
3 implementing it?

4 A. No.

5 Q. Did you consider any other states'
6 procedures for changing the sex designation on
7 a license before revising the policy?

8 A. No.

9 Q. Why not?

10 A. We wanted to stay consistent with
11 Alabama -- the State of Alabama's birth
12 certificate procedure.

13 Q. Did you consider federal government
14 policy for changing designations on passports
15 when you were creating this policy?

16 A. No.

17 Q. Why not?

18 A. We just didn't.

19 Q. I'm going to show you a document
20 that is labeled Plaintiff's Exhibit 8. This
21 is Bates number D338 through -- it's actually
22 D at 337 through D at 380. And could you --
23 first, could you read the cover email?

1 circumstances that you can think of where a
2 legitimate Alabama license could prove that
3 you are who you say you are and a legitimate
4 U.S. passport could not?

5 A. Correct.

6 Q. Okay. And do driver's licenses for
7 other states serve for identification as well?

8 A. Yes.

9 Q. Could you please list for me the
10 interest that it is ALEA's position that
11 policy order 63 serves?

12 A. As I stated earlier, we are a law
13 enforcement agency, and we are preparing and
14 issuing an identification document. This
15 document is used by law enforcement officers
16 to identify the subject that they're dealing
17 with. It also identifies possible criminal
18 activity or the identification of a possible
19 criminal activity. It gives them a
20 description so they can confirm the person
21 that they -- the person in the license is
22 actually the person that they are dealing
23 with. It gives them the information they need

1 to make decisions on how to handle this person
2 for arrest procedures, medical, emergency
3 procedures, booking and retaining procedures,
4 interviewing and questioning procedures, and
5 as well as maintaining the actual physical
6 identifiers of that person.

7 Q. Okay. I'm going to try to say that
8 back to you to make sure I didn't miss
9 anything. You let me know whatever it is I'm
10 missing. So I heard that the government's
11 interest in policy order 63 are to assist
12 officers in identifying the people who they're
13 dealing with, to identify possible criminal
14 activity, to provide information to make
15 decisions for arrests and booking procedures,
16 for interviewing and questioning procedures,
17 for emergency medical procedures, and that the
18 government also has an interest from policy 63
19 in maintaining physical identifiers of license
20 holders. Is that all accurate?

21 A. Yes.

22 Q. And what did I miss?

23 A. I'm not sure. Hopefully nothing.

1 A. Correct.

2 Q. And you would agree with that?

3 A. Yes.

4 Q. And -- I'm trying to make sure I
5 have a thorough list. So would this be the
6 same as the assisting officers in identifying
7 the subjects they're dealing with and
8 maintaining physical identifiers?

9 A. Yes, sir.

10 Q. Okay. It also says that an Alabama
11 driver's license provides identification for
12 law enforcement and administrative purposes,
13 including but not limited to purposes related
14 to arrests, detention, identification of
15 missing persons or crime suspects, and the
16 provision of medical treatment; is that right?

17 A. Yes.

18 Q. And you would agree with those
19 interests?

20 A. Yes.

21 Q. It says here including but not
22 limited to. Are there any other law
23 enforcement or administrative purposes you can

1 think of that policy order 63 serves?

2 A. I don't know if it -- I guess it
3 would fall in there, but as far as identity
4 fraud or identity theft as far as tracking
5 someone that comes in and has -- comes in with
6 an identity as say male and then they go
7 through the process and they change their name
8 and then they change their sex and basically
9 have a whole new identity. It's a way for us
10 to link those identities. We actually had a
11 call from the district attorney's office a
12 couple of weeks -- a couple of week's ago and
13 they inquired -- as far as the subject's
14 identity, they kept running the subject and
15 said it came back as a Charles, and the
16 subject was Jasmine and was female, and the
17 autopsy report said a fully genital --
18 genitals of a female. And so they were
19 questioning the processes, how they were
20 getting this information, and if it was
21 correct. We went back to the original record
22 and the subject did come in as a male, changed
23 their name to a different name, and then not

1 too much longer after that, I think it was a
2 year or so, changed their sex. And so we were
3 able to confirm with the DA's office that this
4 was the person that they had who was
5 previously this name but now died under this
6 name.

7 Q. When you say that they ran the
8 person, what does that mean?

9 A. When you say the -- are you
10 referencing the district attorney's office
11 or --

12 Q. Yes. When you say the district
13 attorney's office was running this person and
14 the person came back as Charles, what would
15 running the person mean?

16 A. I can't testify what they did. I'm
17 assuming they ran them through a criminal
18 database.

19 Q. I see. So the criminal database
20 had the person's previous name --

21 A. Just had them as a -- yes, had them
22 as Charles.

23 Q. Had the previous name as male sex.

1 Q. How does that policy for what one
2 must do to change the sex designation on a
3 driver's license assist in providing a
4 physical description?

5 A. It ensures that the physical
6 features of that person are what's displayed
7 on the license.

8 Q. And what physical features do you
9 mean by that?

10 A. Well, if they are a male, they'll
11 have male genitalia. And if they're a female,
12 they'll have female genitalia.

13 Q. When an officer is seeking to
14 confirm that they are arresting the right
15 person, do they typically look at that
16 person's genitalia?

17 A. No. But it will tell them and the
18 booking personnel how they should separate
19 them in the population.

20 Q. But at the moment of seeking to
21 confirm the person's identity, typically a
22 police officer wouldn't see the person's
23 genitals, right?

1 A. No.

2 Q. If someone -- if an officer
3 perceived somebody as male because that person
4 had male pattern baldness and a beard and was
5 wearing masculine clothing, would that person
6 having a female sex designation on their
7 license assist the officer in confirming a
8 person's identity?

9 A. I don't know if it would assist,
10 but if they were to be arrested it would
11 definitely need to be known.

12 Q. So it might assist with the
13 procedures after the arrest, but it wouldn't
14 necessarily assist with confirming the
15 identity at the time of the arrest?

16 A. The photo would.

17 Q. The photo would, but the female sex
18 designation might not?

19 A. It should if it's -- could you ask
20 the question one more time?

21 Q. So if there were a transgender man
22 who has not gotten a male sex designation on
23 his license but has transitioned from female

1 to male and that he wears masculine clothing
2 and has masculine physical characteristics,
3 such as male pattern baldness and a beard and
4 is typically perceived by others as male, then
5 would it help an officer to confirm that
6 person's identity that his sex designation on
7 his license would still be female?

8 A. It may not help in that situation,
9 but that is still the physical characteristics
10 of that person.

11 Q. In fact, wouldn't a female sex
12 designation on the ID of somebody who the
13 officer perceived as male raise suspicion in
14 the officer that the person might not be who
15 he thought he was?

16 A. That's speculation. It's possible.

17 Q. Do Alabama law enforcement officers
18 receive training on policy order 63?

19 A. No.

20 Q. Do Alabama law enforcement officers
21 receive training on interacting with
22 transgender members of the public?

23 A. I would have to speak to someone in

1 Q. Do you have reason to think that
2 Alabama's interest in law enforcement officers
3 being able to identify people they're
4 interacting with is different from the
5 interests in those other states?

6 A. I'm not -- I don't know what other
7 states require.

8 Q. Do you have any reason to think
9 that Alabama has different needs than other
10 states do in identifying people?

11 A. No.

12 Q. And Alabama doesn't consistently
13 measure or require medical documentation of
14 height before listing that attribute on a
15 license, correct?

16 A. Correct.

17 Q. And it doesn't consistently measure
18 or require medical documentation of weight
19 before listing that attribute, right?

20 A. Correct.

21 Q. Does Alabama law require
22 individuals to update the photos on their
23 license when their appearance changes?

1 municipal arresting officers.

2 Q. Okay. And do the arrest -- I'm
3 sorry. Do the search procedures vary based on
4 whether it's a state, county, or city law
5 enforcement officer?

6 A. Yes. It varies from agency to
7 agency.

8 Q. And could you name -- which
9 agency's search procedures or practices are
10 you able to testify about today?

11 A. None.

12 Q. How do you know that policy order
13 63 is, in fact, serving search procedures?

14 A. Well, it just -- it does.

15 Q. Explain to me how it does.

16 A. I mean, it tells you physically
17 what -- who that person is and how that
18 officer should handle them, if they have
19 procedures in place to handle female subjects
20 differently than male. It also identifies
21 that person for different detention
22 facilities. When they are booked into a
23 facility as an officer you want to know that

1 the information that you're giving to them is
2 correct.

3 Q. Is it your understanding that when
4 agencies have policies that differ for
5 searches based on whether the arrestee is
6 female or male those policies refer
7 exclusively to the person's genitals?

8 A. Yes.

9 Q. And what is the basis for that
10 knowledge?

11 A. For the officer?

12 Q. How do you know that all of these
13 different policies when they refer to female
14 or male are referring to genitals?

15 A. I'm going off the information that
16 we use based on the identifiers on the
17 license.

18 Q. And I'm trying to figure out why
19 it's important that the identifier on the
20 license relates to genitals. So how do you
21 know that people's genitals are what matter
22 for purposes of search procedures?

23 A. I'm not sure I understand your

1 that genitals are the most useful piece of
2 information about sex for purposes of
3 detention?

4 A. It is for our purposes for the
5 driver's license. I need you to define
6 genitals to make sure my definition matches
7 yours.

8 Q. So you testified that one interest
9 the policy order 63 serves is to provide
10 information to detention agencies, right?

11 A. Correct.

12 Q. What information is it that you
13 intend to provide through policy order 63?

14 A. The physical characteristics of
15 their sex.

16 Q. And which physical characteristics
17 do you mean?

18 A. If they're a male, they have a
19 penis. And if they're a female, they have a
20 vagina.

21 Q. And do you know of any reason why
22 detention agencies would be more interested in
23 whether someone has a penis or a vagina than

1 any other sort of information related to sex?

2 A. I don't know if they would be more
3 interested, but I would say if they're putting
4 them into a holding cell that they would want
5 to know that information is accurate.

6 Q. So is it your understanding that
7 detention agencies will place people into a
8 holding cell based on whether they have a
9 penis or a vagina?

10 A. No. I'm saying I provide that
11 information so they can make that decision on
12 whether or not they want to put that
13 individual in a different holding cell.

14 Q. Is there any reason that you know
15 why it is more helpful to provide information
16 about whether somebody has a penis or a vagina
17 rather than any other type of information
18 about their sex?

19 A. That's who they are physically.
20 It's -- I mean, if that's who they are, then
21 that's their physical characteristic, that
22 they have those physical attributes.

23 Q. Do you know if any Alabama agencies

1 provision of emergency medical care was an
2 interest that policy order 63 serves, right?

3 A. Yes.

4 Q. And can you tell me how policy
5 order 63 serves that interest?

6 A. Emergency personnel, you know, when
7 you provide them the driver's license they see
8 whether they're dealing with a male or a
9 female.

10 Q. And how does that assist them with
11 providing medical care?

12 A. It gives them the information that
13 they know who they're dealing with.

14 Q. Under what circumstances would
15 emergency medical personnel rely on the sex on
16 a driver's license rather than physical
17 examination?

18 A. I'm not sure that they would. It's
19 just -- you know, it's a basic identifier for
20 those personnel that are responding.

21 Q. In what circumstances would the
22 health care that the person would receive vary
23 based on the sex designation on their license?

1 A. That would be up to the emergency
2 personnel, the responders.

3 Q. Are you aware of any circumstances
4 where the sex designation on the license would
5 change the medical treatment that someone
6 might receive?

7 A. No.

8 Q. You mentioned earlier that it was
9 important to have policy order 63 be
10 consistent with the state policy for birth
11 certificates; is that right?

12 A. Yes.

13 Q. Could you remind me of why having
14 that consistency is important to the
15 government?

16 A. We want to be consistent in
17 providing -- with requiring the same types of
18 documents when we're dealing with the same
19 type of situation.

20 Q. Is consistency with Social Security
21 records also important?

22 A. I'm not sure what information is in
23 Social Security records.

1 requirements for Alabama birth certificates,
2 right?

3 A. Yes. Maybe I -- did I answer
4 that -- I may have missed -- did I answer
5 incorrectly? Yes, we are consistent with the
6 State of Alabama's requirements to change the
7 sex designation with our policy.

8 Q. Okay. And why is it more important
9 to ALEA to match the requirements for birth
10 certificates than for say U.S. passports?

11 A. Well, we want to maintain
12 consistency, but we want what is displayed on
13 the document to be true.

14 Q. So is it ALEA's position that the
15 information on U.S. passports is less likely
16 to be true than the information on birth
17 certificates?

18 A. I don't know.

19 Q. Could documentation from a doctor
20 stating that someone had had clinical, but not
21 necessarily surgical, treatment to change
22 their sex provide a paper trail for purposes
23 of driver's licenses?

1 Q. Okay. And do you personally
2 believe that somebody who was assigned male at
3 birth and who identifies as female and who has
4 had sex reassignment surgery is a woman?

5 MR. CHYNOWETH: Object to form.

6 A. Repeat the question, please.

7 Q. Do you personally believe that
8 somebody who was assigned male at birth, who
9 identifies as female, and who has had sex
10 reassignment surgery is a woman?

11 MR. CHYNOWETH: Object to the form.

12 A. Genetically they're a male.
13 Physically they're a female.

14 Q. Okay. And personally do you
15 believe that somebody who was assigned male at
16 birth and who identifies as female and who has
17 not had sex reassignment surgery is a woman?

18 MR. CHYNOWETH: Object to the form.

19 A. They are physically a male.

20 Q. So you don't believe that somebody
21 is a woman in that circumstance?

22 A. Correct.

23 Q. And why is that?